

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

JOSEPH PETER SCHMITT )  
                        )  
                        )  
                        )  
v.                       ) C.A. No. 2004-10451-RWZ  
                        )  
                        )  
JEFFREY SMITH, et al. )  
                        )  
                        )  
Defendants.            )

**MOTION TO DISMISS OR, IN THE ALTERNATIVE FOR SUMMARY  
JUDGMENT OF DEFENDANTS SMITH, GROSSI, ALLEN, FARIA, THERIEN  
AND THE MASSACHUSETTS DEPARTMENT OF CORRECTION**

Now come the above-named defendants and hereby move to dismiss the instant complaint or, in the alternative, move for summary judgment in their favor. In support whereof, defendants rely on the accompanying Defendants' Memorandum of Law in Support of Motion to Dismiss Or, in the Alternative, For Summary Judgment, Affidavit of Robert Murphy, Affidavit of John Luongo, and the Certified Administrative Record for MCI-Cedar Junction Disciplinary Report No. 02-0563.

Respectfully submitted,  
Defendants  
By their attorneys:

NANCY ANKERS WHITE  
Special Assistant Attorney General

/s/ Philip W. Silva  
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I hereby certify that a true copy of the above document was served upon each party appearing pro se by mail on February 25, 2005.

/s/ Philip W. Silva  
Philip W. Silva, Esq.